IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WP(C).No. 27149 of 2006(F)

PETITIONER:

MANDOOR ALI AGED 60 YEARS,
S/O.MUHAMMAD, HOUSE NO.K.P-X-136,
MUYYAMKUNNU MUKALBHAGAM, EZHOME AMSOM,
NARIKODE DESAM, TALIPARAMBA TALUK, KANNUR.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.P.K.BEENA

RESPONDENTS:

1. REVENUE DIVISIONAL OFFICER,
R.D.O. OFFICE, THALASSERY,
KANNUR DISTRICT.

2. THE SECRETARY,
KERALA STATE HOUSING BOARD, PILATHARA,
KANNUR DISTRICT.

3. THE THASILDAR,
KANNUR TALUK, TALUK OFFICE, KANNUR.

4. THE VILLAGE OFFICER,
EZHOME VILLAGE, KANNUR TALUK, KANNUR.

5. K.P.ASHRAF, S/O.KUNHAMMAD,
KADAVATH PEEDIAKKAYIL, KOTTILA, EZHOME VILLAGE,
KANNUR TALUK, KANNUR.

R5 BY ADV. SRI.A.K.ABDUL AZEEZ
R2 BY POOVAPPALLY M.RAMACHANDRAN NAIR,SC.KSHB
R1, R3 & R4 BY GOVERNMENT PLEADER SMT.N.SUDHADEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 22.9.2005.

EXT.P2 TRUE COPY OF THE JUDGMENT DATED 9.11.2005 IN W.P.C.31295/06 BY THIS COURT.

EXT.P3 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 1.1.2006

EXT.P4 TRUE COPY OF THE ORDER DATED 21.3.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P5 TRUE COPY OF THE ORDER DATED 24.8.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P6 TRUE COPY OF THE PUBLICATION DATED 17.10.2006 IN DESABHIMANI.

EXT.P7 TRUE COPY OF THE POSTAL RECEIPT DATED 3.4.06

EXT.P8 TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 4.4.06.

RESPONDENTS' EXHIBITS:

EXT.R5(A) TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.34220/2005 DATED 27.3.2006.

EXT.R5(B) TRUE COPY OF THE PHOTOGRAPH OF THE HOUSE WHICH WAS RENOVATED RECENTLY

EXT.R5(C) TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.31295/05

EXT.R5(D) TRUE COPY OF THE PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER, THALASSERY.

ANNEXURE R1 TRUE COPY OF THE REPRESENTATION DATED 1.1.2006.

/ TRUE COPY /

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.27149 of 2006

Dated this the 12th day of April, 2007.

JUDGMENT

The petitioner availed of a loan of Rupees five lakhs from the Kerala State Housing Board for constructing a residential building in the year 1999. It is stated that the amount was to be repaid in 108 monthly instalments of Rs.9850/-. The rate of interest of the loan was 18.25%. The petitioner defaulted to pay the amount. Therefore, the Housing Board initiated revenue recovery steps. The Tahsildar, Kannur issued Ext.P1 notice proposing to sell the property in public auction on 18.10.2005. There was a news item in the newspapers regarding the sale on 17.10.2005. The petitioner submits that on the said date no sale took place. Some persons came and waited till the afternoon and thereafter they went away.

2. The petitioner approached this Court and this Court by Ext.P2 judgment directed the Housing Board to extend the benefit of One Time Settlement scheme to the petitioner and in case he fails to clear the arrears on or before 31.12.2005 it was also directed that the petitioner shall hand over possession of the building to the Housing Board. The relevant portion of the said judgment reads as follows:

> "In view of the undertaking by the petitioner to settle the liability under OTS scheme on or before 31.12.2005 W.P. is disposed of with direction to the second respondent to grant OTS benefit to the petitioner and give statement of liability under the Scheme to be paid by the petitioner on or before 31.12.2005. Third respondent is directed to withhold recovery proceedings till 31.12.2005. However, if petitioner does not settle liability on or before 31.12.2005, in terms of the undertaking before this Court, then there will be direction to the petitioner to hand over possession of the building to the third respondent for sale in recovery proceedings on 1.1.2006. If payment is made voluntarily as above, then no collection charges will be recovered from the petitioner. If the petitioner does not comply with the above direction, and refuses to give possession of building the Housing Board will move this Court for initiating contempt against the petitioner."

3. On coming to know that the Tahsildar created some documents to the effect that the building was sold to the 5th respondent on 18.10.2005, the petitioner filed Ext.P3 representation to the first respondent on 1.1.2006. But without considering Ext.P3 the Revenue Divisional Officer passed Ext.P4 order confirming the sale on 21.3.2006. Later he was served with Ext.P5 communication stating that as the petitioner has failed to file any objection against the sale within one month and as he was not present at the place of sale, his objection cannot be considered. This writ petition is filed challenging Exts.P4 and P5. He also seeks a direction to the revenue recovery officials to re-auction the building. Petitioner attacks the sale on

several grounds. According to him, the sale was made for a pittance. Though the upset price fixed by the Executive Engineer of the Housing Board was Rs.8.5 lakhs it was sold for Rs.6.32 lakhs. The market value of the land and building would come to atleast Rs.10 lakhs. There was no proper publication of the sale in terms of the relevant provisions of the Revenue Recovery Act. Therefore, the sale is vitiated. According to him, no sale took place on 18.10.2005. All the documents to that effect are cooked up by the Tahsildar. The Revenue Divisional Officer has not considered his objection dated 1.1.2006. He has failed to exercise the jurisdiction vested in him under Section 54 of the Revenue Recovery Act while considering the question of confirmation of sale.

4. The first respondent has filed a counter affidavit in which it is stated that the sale was conducted after complying with all the formalities in accordance with law. Ext.P3 letter stated to have been filed by the petitioner has not been received by him. In fact a letter dated 1.1.2006 was received on 4.4.2006, a photocopy of which is produced as Annexure R1. According to the first respondent, the petitioner has not placed the correct facts before this Court and, therefore, the writ petition is liable to be dismissed.

5. The third respondent Tahsildar has also filed a counter

affidavit stating that the sale was conducted properly. At the time of auction local people, bidders, village staff and revenue officials were present. The petitioner alone was absent. According to him, the price offered by the successful bidder is more than the upset price fixed by the Housing Board and village officials.

6. The second respondent has filed a counter affidavit stating that a housing loan of Rs.5 lakhs was sanctioned to the petitioner in the year 1999 bearing interest at the rate of 18.25%. Since the petitioner defaulted to pay the amount, revenue recovery steps were taken. Though OTS facility was extended to the petitioner, he did not avail of the same. Finally, the property was sold in public auction on 18.10.2005 and the revenue authorities remitted an amount of Rs.6,01,905/- on 22.4.2006. There is a balance of Rs.5,97,465/- outstanding as on 30.11.2006.

7. The 5th respondent auction purchaser has filed a counter affidavit supporting the impugned proceedings. According to him everything is done legally and validly. He has paid the entire amount. When the building was handed over to him, it was only an incomplete structure and he has expended about Rs.14 lakhs to make it a fullfledged residential building.

8. Heard learned counsel on both sides.

9. The learned Government Pleader has made available to me the file leading to the auction. Going by the pleadings of the petitioner he does not claim that he is willing to pay the amount and therefore the property should be returned to him. His only case is that if the land and building were sold for a reasonable price, atleast his loan amount would have been wiped out. Even if he could not comply with the terms in Ext.P2 judgment he has a right to challenge the sale if the same is conducted illegally and improperly. Regarding the submission of Ext.P3 representation there is serious dispute between the parties. According to the petitioner, he has submitted it directly to the Revenue Divisional Officer. He has no other document to show that he has filed it. But, even if no objection is filed the officer exercising the powers of the District Collector while confirming the sale has got a duty under Section 54 of the Revenue Recovery Act to ensure that the sale is conducted properly. This is evident from the proviso to Section 54. Section 54 of the Revenue Recovery Act reads as follows:

> "**54. Order confirming or setting aside sale.-** On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 52 or Section 53 or if any such application has been made and rejected, the Collector shall make an order confirming the sale:
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> Provided that if the Collector has reason to think

> that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale."

10. The proviso to the above Section shows that if he has reason to think that the sale should be set aside, he can do it even if there is no application and also on grounds not taken in the objection, if any filed. Going by the facts, it would appear that the Executive Engineer of the Housing Board has fixed the upset price of the building at Rs.8.5 lakhs. But the sale has been made at a price of Rs.6.32 lakhs. Further, in this case the newspaper publication was made only on the previous day of the sale. The respondents would justify the sale on the plea that since it was adjourned several times such a publication will be sufficient. In the light of the decision of this Court reported in **Aboobacker** v. **State of Kerala** (2006 (2) KLT SN Case No.81) if the sale is adjourned beyond 60 days from the original sale date, fresh notice shall be served and published as if it was the original sale. Such a requirement is mandatory. Non-compliance of the same will vitiate the sale. In this case the file would show that there was no newspaper publication for the first sale or regarding the sale proposed to be held on subsequent dates. After several adjournments, finally the sale was held on 18.10.2005 and for that the news item was published only on

17.10.2005. Therefore, I think that there was no proper publication enabling the interested persons to participate in the auction. Further in this case the petitioner was also not heard before the confirmation order was passed. Though Section 54 of the Revenue Recovery Act does not contemplate an opportunity of being heard for the land owner I feel that the omission of Legislature will be supplied by the principles of natural justice. A decision under Section 54 will have the affect of divesting the owner of his property. So, even if there is no provision for hearing under Section 54, I feel that the owner of the property is entitled to be heard before final orders are passed under Section 54. See the comments of learned author V.G.Ramachandran on this point in his Law of Writs (sixth edition revised by Justice C.K.Thakker), which reads as follows:

> "Generally, no provision is found in any statute requiring observance of the principles of natural justice by adjudicating authorities. The question then arises whether the adjudicating authority is bound to follow the principles of natural justice. The law is well-settled after the powerful pronouncement of Byles,J. in Cooper v. Wandsworth Board of Works (1863) 14 CB(NS) 180 : 143 ER 414, wherein His Lordship observed:
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> "(A) long course of decisions, beginning with Dr.Bentley case and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the

legislature."

de Smith Judicial Review of Administrative Action (5th Edn.), p.383 also says that where a statute authorising interference with property or civil rights was silent on the question of notice and hearing, the courts would apply the rule as it is "of universal application and founded on the plainest principles of natural justice".

"It is to be implied unless the contrary appears," said Lord Russell, "that Parliament does not authorise by the Act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures, compliance with those principles." Fairmount Investments Ltd. v. Secretary of State for the Environment, (1976) 1 WLR 1255 : (1976) 2 AllER 865 (HL)

Netheim (Privy Council, Natural Justice and Certiorari cited in Shephard v. Union of India, (1987) 4 SCC 431, 444 : AIR 1988 SC 686) rightly stated: "Formerly the presumption had been that there was no obligation to give a hearing unless the statute itself indicated; now the presumption is that there is such an obligation unless the statute clearly excludes it, notwithstanding the vesting of a power, in subjective terms, in a Minister responsible to Parliament."

The above principle is accepted in India also. It is well settled that where exercise of a power results in civil consequences, unless the statute specifically rules out, the principles of natural justice would apply. (State of Orissa v. Dr.Binapani, AIR 1967 SC 1269). It is not permissible to interpret any statutory instrument so as to exclude natural justice unless the language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. (Liberty Oil Bills v. Union of India , (1984) 3 SCC 465)

> In the historic case of A.K.Kraipak v. Union of India, (1969) 2 SCC 262, speaking for the Supreme Court, Hegde,J. Propounded:
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> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."
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> In Maneka Gandhi v. Union of India, (1978) 1 SCC 248, Beg, C.J. observed: "It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action."

11. Having regard to the totality of the circumstances I feel that the confirmation of sale was not made in a fair and proper manner. I think the matter should be reconsidered after affording an opportunity of being heard to the petitioner, the Housing Board and also the auction purchaser. Accordingly Exts.P4 and P5 are quashed. The Revenue Divisional Officer shall rehear the matter after notice to the abovesaid parties within one month from the date of receipt of a copy of this judgment. If anybody is aggrieved by the decision of the Revenue Divisional Officer, they have remedies under Section 83 of

the Revenue Recovery Act which may be invoked by them.

Regarding the possession of the property, status quo as on today shall continue until the Revenue Divisional Officer takes a decision in the matter. The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE

vns.